



PATENT  
Application Serial No. 09/717,838  
Attorney Ref. No. 021US1

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re: Patent Application of )  
Walter D. Gillespie ) Group Art Unit: 3736  
App. Ser. No. 09/717,838 )  
Filed: November 21, 2000 ) Examiner: Pamela Lynn Wingood  
For: BONE GRAFT HARVESTER )

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TECHNOLOGY CENTER R3700

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Mail Stop: Issue Fee, Alexandria, VA 22313-1450, or being facsimile transmitted to the USPTO, on this date:

Date: October 29, 2003

Signature: [Signature]

Printed Name: JONATHAN SPANGLER

**PETITION TO WITHDRAW HOLDING OF**  
**ABANDONMENT UNDER 37 C.F.R. 1.181**

Commissioner for Patents  
P.O. Box 1450  
Mail Stop: Issue Fee  
Alexandria, VA 22313-1450

Dear Sir:

In response to Notice of Abandonment mailed by the US Patent and Trademark Office on September 15, 2003, Applicant respectfully requests that the Holding of Abandonment be withdrawn.

The Holding of Abandonment was based on an alleged failure to timely submit the issue fee by the deadline of July 21, 2003. Accompanying is a copy of the Issue Fee Transmittal (Exhibit A), which reflects that the issue fee was deposited via first class mail with a certificate of mailing dated July 10, 2003. Furthermore, as shown on the accompanying Return Receipt Postcard (Exhibit B), the Issue Fee Transmittal was received by the US Patent and Trademark Office on July 16, 2003. Since the due date for receipt of the Issue Fee was July 21, 2003, Applicant believes that receipt by the US Patent and Trademark Office of the authorization to charge the fee to applicant's account on July 16, 2003 constituted a timely payment of the Issue Fee as required by statute.

Based on the foregoing, Applicant respectfully requests that the Commissioner grant this Petition for Withdrawal of the Holding of Abandonment on Patent Application 09/717,838 (021US1) such that the case may be processed for issuance in due course.

Respectfully submitted,  
NUVASIVE, INC.

By: 

Jonathan Spangler, Esq.  
Registration No. 40,182

10065 Old Grove Road  
San Diego, CA 92131  
Tel.: (858) 243-0029

October 29, 2003



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/717,838	11/21/2000	Walter D. Gillespie	18608002410	2083

30328 7590 09/15/2003

NU VASIVE, INC.  
10065 OLD GROVE ROAD  
SAN DIEGO, CA 92131



EXAMINER
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WINGOOD, PAMELA LYNN

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 09/15/2003

p #14

Please find below and/or attached an Office communication concerning this application or proceeding.

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**UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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09/717, 838

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TECHNOLOGY CENTER R3700

EXAMINER
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ART UNIT	PAPER NUMBER
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DATE MAILED:

P #14

**NOTICE OF ABANDONMENT**

This application is abandoned in view of:

- ☐ Applicant's failure to timely file a proper response to the Office letter mailed on \_\_\_\_\_.
- ☐ A response (with a Certificate of Mailing or Transmission of \_\_\_\_\_) was received on \_\_\_\_\_, which is after the expiration of the period for response (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
- ☐ A proposed response was received on \_\_\_\_\_, but it does not constitute a proper response to the final rejection.
- (A proper response to a final rejection consists only of: a timely filed amendment which places the application in condition for allowance; a Notice of Appeal; or the filing of a continuing application under 37 CFR 1.62 (FWC).)
- ☐ No response has been received.

☒ Applicant's failure to timely pay the required issue fee within the statutory period of three months from the mailing date of the Notice of Allowance.

- ☐ The issue fee (with a Certificate of Mailing or Transmission of \_\_\_\_\_) was received on \_\_\_\_\_.
- ☐ The submitted issue fee of \$\_\_\_\_\_ is insufficient. The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_.
- ☒ The issue fee has not been received.

☐ Applicant's failure to timely file new formal drawings as required in the Notice of Allowability.

- ☐ Proposed new formal drawings (with a Certificate of Mailing or Transmission of \_\_\_\_\_) were received on \_\_\_\_\_.
- ☐ The proposed new formal drawings filed \_\_\_\_\_ are not acceptable.
- ☐ No proposed new formal drawings have been received.

☐ The express abandonment under 37 CFR 1.62(g) in favor of the FWC application filed on \_\_\_\_\_.

☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.

☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a) upon the filing of a continuing application.

☐ The decision by the Board of Patent Appeals and Interferences rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.

☐ The reason(s) below:

ABANDONMENT  
CONTACT PERSON IS:  
TOM HAWKINS

EXHIBIT B



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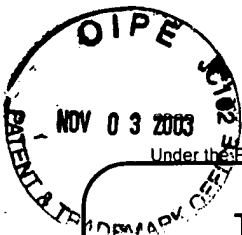
NOV 05 2003

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Please date stamp this postcard evidencing receipt by the US Patent and Trademark Office of the following materials regarding App. Ser. No. 09/717,838 on July 10, 2003 (Attorney Ref. 021US1):

1. Transmittal Form PTO/SB/21 (1 pg);
2. Issue Fee Transmittal Form and Copy (2 pgs); and
3. Return Postcard (1 page).





Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**TRANSMITTAL  
FORM**

(to be used for all correspondence after initial filing)

Application Number	09/717,838
Filing Date	November 21, 2000
First Named Inventor	Walter D. Gillespie
Art Unit	3736
Examiner Name	Pamela Lynn Wingood
Attorney Docket Number	021US1

Total Number of Pages in This Submission

9

**ENCLOSURES (Check all that apply)**

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Fee Transmittal Form                                | <input type="checkbox"/> Drawing(s)                                       | <input type="checkbox"/> After Allowance communication to Technology Center (TC)        |
| <input type="checkbox"/> Fee Attached  | <input type="checkbox"/> Licensing-related Papers                         | <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences     |
| <input type="checkbox"/> Amendment/Reply                                     | <input checked="" type="checkbox"/> Petition                              | <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) |
| <input type="checkbox"/> After Final   | <input type="checkbox"/> Petition to Convert to a Provisional Application | <input type="checkbox"/> Proprietary Information  |
| <input type="checkbox"/> Affidavits/declaration(s)                           | <input type="checkbox"/> Power of Attorney, Revocation                    | <input type="checkbox"/> Status Letter  |
| <input type="checkbox"/> Extension of Time Request                           | <input type="checkbox"/> Change of Correspondence Address                 | <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):         |
| <input type="checkbox"/> Express Abandonment Request                         | <input type="checkbox"/> Terminal Disclaimer                              |   |
| <input type="checkbox"/> Information Disclosure Statement                    | <input type="checkbox"/> Request for Refund                               |   |
| <input type="checkbox"/> Certified Copy of Priority Document(s)              | <input type="checkbox"/> CD, Number of CD(s) _____                        |   |
| <input type="checkbox"/> Response to Missing Parts/Incomplete Application    |   |   |
| <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53 |   |   |

**Remarks**Response to Notice of Abandonment  
Petition to Withdraw Holding of Abandonment  
Supporting Exhibits**RECEIVED**

NOV 05 2003

TECHNOLOGY CENTER R3700

**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Firm or Individual name	Jonathan D. Spangler
Signature	
Date	October 29, 2003

**CERTIFICATE OF TRANSMISSION/MAILING**

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

Typed or printed name	Jonathan D. Spangler
-----------------------	----------------------

Signature

Date

October 29, 2003

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

EXHIBIT A

PART B - FEE(S) TRANSMITTAL

RECEIVED

NOV 05 2003

Complete and send this form, together with applicable fee(s), to: Mail Box ISSUE FEE

Commissioner for Patents  
Washington, D.C. 20231

TECHNOLOGY CENTER R3700

Fax (703)746-4000

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 4 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Legibly mark-up with any corrections or use Block 1)

30328

7590

04/21/2003

NUVASIVE, INC.  
10065 OLD GROVE ROAD  
SAN DIEGO, CA 92131



Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Box Issue Fee address above, or being facsimile transmitted to the USPTO, on the date indicated below.

JONATHAN SPANKLER	(Depositor's name)
<i>[Signature]</i>	(Signature)
7-10-03	(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/717,838	11/21/2000	Walter D. Gillespie	18608002410	2083

TITLE OF INVENTION: BONE GRAFT HARVESTER

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$650	\$0	\$650	07/21/2003

EXAMINER	ART UNIT	CLASS-SUBCLASS
WINGOOD, PAMELA LYNN	3736	600-567000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
- ☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a Customer Number is required.

2. For printing on the patent front page, list (1) the names of up to 3 registered patent attorneys or agents. OR, alternatively, (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1. Jonathan Spangler  
2. \_\_\_\_\_  
3. \_\_\_\_\_

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. Inclusion of assignee data is only appropriate when an assignment has been previously submitted to the USPTO or is being submitted under separate cover. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY AND STATE OR COUNTRY)

NuVasive, Inc.

San Diego, CA

Please check the appropriate assignee category or categories (will not be printed on the patent) ☐ individual ☒ corporation or other private group entity ☐ government

4a. The following fee(s) are enclosed:

- ☒ Issue Fee
- ☐ Publication Fee
- ☐ Advance Order - # of Copies \_\_\_\_\_

4b. Payment of Fee(s):

☐ A check in the amount of the fee(s) is enclosed.

☐ Payment by credit card. Form PTO-2038 is attached.

☒ The Commissioner is hereby authorized by charge the required fee(s), or credit any overpayment, to Deposit Account Number 502040 (enclose an extra copy of this form).

Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above.

(Authorized Signature)

(Date)

7-10-03

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

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TRANSMIT THIS FORM WITH FEE(S)